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ABSTRACT

This paper was written to suggest what may be a trend in judicial thinking on the subject of married students in the public schools and to furnish a reasonably comprehensive reference on the matter for those interested in the legal aspects of the problem of married students in the school. Eight cases are reviewed. These are concerned with the following topics: (1) right to attend; (2) exclusion for reasons of conduct; (3) exemption from compulsory attendance; (4) temporary exclusion; (5) marriage not necessarily emancipating; (6) exclusion from extra class activities; and (7) exclusion of pregnant students. (Author/SK)

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HOWARD A. MATTHEWS

The courts and married students

INTEREST IS HIGH these days in the subject of adolescent marriages, judging from the large and increasing number of articles appearing in all types of periodicals. Since many young marriages involve students in the public schools, the subject of teenage marriages is particularly interesting to school people—teachers, administrators, school board members. Undoubtedly, married students bring special problems to the schools. Some student marriages have even brought school boards and students to court on opposite sides of the judge's bench. More student marriages—and every indication is there will be more—are likely to lead to more litigation.

I have written this article to suggest what may be a trend in the judicial thinking on the subject of married students in the public schools and to furnish a reasonably comprehensive reference on the matter for those interested in the legal aspects of the problem of married students in the school. The major part of this article is a chronological review of the action taken by appellate courts on cases involving married students in the public schools. To make the article more useful, I have included a list of opinions of State attorneys general on the subject and a list of representative articles chosen from current periodicals discussing different aspects of teenage student marriages.

In the nearly 100 years that have passed since the first court test of a statute relating to the admission to a public school of an applicant "under 21 and unmarried," [1] courts of record have heard less than a dozen cases involving married students in the public schools. Two were heard in 1929; the others since World War II. An analysis of the decisions in each case suggests to me a growing disposition of the courts to look with some favor on rules and regulations of boards of education limiting or restricting the activities or attendance of married students and otherwise discouraging early marriages.

The first known ruling by a State attorney general on the matter of married students in the public schools was issued in Michigan in 1911. Between 1911 and 1946 only eight State attorneys general wrote on the subject, chiefly on the applicability of compulsory attendance statutes to students who marry while still of compulsory-attendance age. In the 15 years since World War II, however, State attorneys general have issued at least 26 opinions on the power of school boards to control not only the attendance of married students but their conduct and extracurricular activities as well.

Right to attend

I believe that the most frequently cited decision of an appellate court of record on the right of married students to attend the public schools is the one handed down by the Supreme Court of Mississippi in June 1929 in the McLeod case.[2] At issue was the right of a school board to bar a student from school solely on the basis of marriage. The board had passed the resolution under authority granted by the State to school boards to "suspend or dismiss pupils, when the best interests of the school make it necessary." [3] The case concerned a 15-year-old girl who was denied admittance to the Moss Point, Miss., school for no other reason than that she was married.

In weighing the merits of the case, the court stressed the separate powers of boards of education and of the courts in these words:

> The court will not consider whether such rules and regulations are wise or expedient, but merely whether they are a reasonable exercise of the authority conferred upon the trustees by law. It is peculiarly within the province of the trustees to determine what things are detrimental to the successful management, good order, and discipline of the schools in their charge, and the rules required to produce those conditions.

Mr. Matthews, head of the school law unit of the Office of Education, has been a classroom teacher and a principal of both elementary and secondary schools. He came to the Office in January 1960 from the Alaska Department of Education, where he had served as a secondary school supervisor, assistant commissioner, and commissioner of education. His work included assisting the Alaska Legislative Council in a comparative study of State school codes for the purpose of developing a recodification of Alaskan school laws.

[1] *Draper, Trustee, & C.* v. *Cambridge*, Supreme Court of Indiana, May Term, 1863.

[2] *McLeod et al., Trustees Moss Point Public Schools* v. *State ex rel. Miles* (Mississippi), 122 So. 737 (1929).

[3] Par. 15, Sec. 126, c. 283, Laws of 1924, Mississippi (Sec. 8767, Hemingway's Code 1927).

The presumption is always in favor of the reasonableness and propriety of any such rule. The reasonableness, however, is a question of law for the courts.[4]

In striking down the board's regulation, the court said:

It is argued that marriage emancipates a child from all parental control of its conduct as well as such control by the school authorities; and that the marriage relation brings about views of life which should not be known to unmarried children; that a *married child in the public schools will make known to its associates in schools such views, which will therefore be detrimental to the welfare of the school.* We fail to appreciate the force of the argument. Marriage is a domestic relation highly favored by the law. When the relation is entered into with correct motives, the effect on the husband and wife is refining and elevating rather than demoralizing. *Pupils associating in school with a child occupying such a relation, it seems, would be benefitted instead of harmed.*[5] [Italics mine.]

Exclusion for reasons of conduct

In 1929 the Supreme Court of Kansas, in the case of *Nutt* v. *Board of Education of the City of Goodland,*[6] had to determine the reasonableness of the exclusion of a married girl from school for reasons of questionable conduct. Though the courts said that the constitutional and statutory right of every child to attend public school is always subject to reasonable regulation, and that a "child who is of a licentious or immoral character may be refused admission," [7] a majority of its justices declared the board's ruling invalid. The majority opinion stated:

We are of the opinion the evidence was insufficient to warrant the board in excluding plaintiff's daughter from the schools of Goodland. It is the policy of the State to encourage the student to equip himself with a good education. The fact that the plaintiff's daughter desired to attend school was of itself an indication of character warranting favorable consideration. Other than the fact that she had a child conceived out of wedlock, no sufficient reason is advanced for preventing her from attending school.[8]

Three justices, however, dissented. One of them, Justice Hopkins, quoting from a previous Kansas case involving the power of school boards, argued that the court had exceeded its authority. He said, "The control of the city schools . . . is devolved by the legislature upon the board of education. The discretion committed to that body is to be exercised . . . 'untrammeled by judicial interference.' . . . Its judgment, and not that of the courts, must determine the proper solution of the practical questions of administration that continually arise. Its decisions must be final except when its action is capricious or arbitrary." [9] He and the other dissenting justices found no "bad faith on the part of the defendants," and they contended that the judgment of the court "should not be substituted for that of the board of education."

Exemption from compulsory attendance

Not until 1946 did another court of record hear a case on the attendance of a married student. In that year the Supreme Court of Louisiana, in the case of *State* v. *Priest*, set aside the ruling of a juvenile court, which had found a married girl, age 15, to be truant for not attending school because State law required every child to attend until his 16th birthday. The lower court had disregarded her plea that marriage gave her an exemption.

In ruling in the girl's favor the court averred that "the marriage relationship, regardless of the age of the persons involved, creates conditions and imposes obligations upon the parties that are obviously inconsistent with compulsory school attendance or with either the husband or wife remaining under the legal control of parents and other persons." [10]

In substance, the court's ruling means that a juvenile becomes an "emancipated minor" when he marries and is no longer a child in the sense that he is under the care and control of a parent, guardian, or other person responsible for his school attendance.

The disposition to consider married students emancipated from compulsory attendance was reaffirmed by the Supreme Court of Louisiana in 1959 in the Goodwin case.[11] In this instance, the court held that the marriage of a 14-year-old girl, although illegally performed, was valid and that she was not a "child" under parental or other control and, therefore, not subject to compulsory attendance laws. A minor, it said in effect, who acquires the status of wife has the right and the obligation to live with her husband and to accompany him wherever he resides. In reversing a trial court's ruling, the court, citing the Priest case as precedent, said this:

While we view with sympathy the trial judge's deep convictions of the tragedy inherent in the marriage of girls of tender years and his skepticism of any ultimate good resulting therefrom, we recognize the basic fact that under our system of government the matter of fixing the public policy of this State with respect to the age at which people may or

[4] 24 R.C.L. pp. 575, 576, par. 24.

[5] *McLeod* v. *State, supra,* at 738.

[6] *Nutt* v. *Board of Education of City of Goodland, Sherman County, et al.* (Kansas), 278 P. 1065 (1929).

[7] Rev. St. 1923, 72-1029, 72-2614, 72-3209 (Kansas). *See also Kenny* v. *Gurley,* 208 Ala. 623, 95 So. 34, 26 A.L.R. 813; 24 R.C.L. pp. 644-648.

[8] *Nutt* v. *Board of Education, supra,* at 1066.

[9] *Williams* v. *Board of Education of City of Parsons,* 81 Kan. 593, 106 P. 36. (*See also* dissenting opinion in *Ryan* v. *Board of Education,* 124 Kan. 89, 257 P. 945).

[10] *State* v. *Priest* (Louisiana), 27 So. 2d 173, 174 (1946).

[11] In re State in Interest of Goodwin, 214 La. 1062, 39 So. 2d 731 (1949).

may not marry as well as fixing the status of marriages solemnized in violation thereof *lies exclusively within the province of the legislative branch.*[12] [Italics mine.]

The court emphasized, as did the dissenting justices in the Nutt case, that the court's responsibility is not to fix public policy but to interpret whether the acts of public officials conform to the laws enunciating public policy.

Temporary exclusion

In 1957 the Supreme Court of Tennessee heard the first test in a court of record on the reasonableness of a school board's temporary exclusion of married students from school under certain conditions (*State* v. *Marion County School Board*).[13] It found reasonable the board's resolution excluding from school for the rest of the term students who marry during a term and excluding from the next term students who marry during the vacation.

The case involved a young woman of 18 who married in February of her last year in high school. The school board in accordance with its regulation (admittedly aimed at discouraging student marriages) forbade her attendance during the remaining 3 months of the school year. Her father-in-law sought a writ of mandamus to have her reenrolled so she could graduate with her class. He asserted that it was unreasonable for the board to exclude her so near graduation.

In deciding in favor of the school board, the court noted the fact that the board had acted on the advice of the high school principals of the county. It commented on this fact in these words:

> If the representation made to the County Board of Education by every high school principal in Marion County as to their respective observations and experiences on this subject is at all accurate, then married students, and by virtue of the psychological effect thereof, *for a few months immediately following marriage, have a detrimental influence upon fellow students, hence a detrimental effect upon the progress and efficiency of the school.* [Italics mine.]
>
> We are accustomed to accept the testimony of experts in the various fields of human activity as to what is reasonably necessary for the welfare of the particular activity as to which this expert therein is testifying. No reason is suggested as to why this practice should not be followed when the witness is an expert in the field of operating public high schools.[14]

In concluding that the regulation adopted by the school board under its statutory responsibility to "suspend pupils when the progress or efficiency of the school makes it necessary," was a reasonable one, the court stated that its duty, regardless of the personal views of its justices, is to uphold a school board's regulation unless the regulation appears arbitrary and unreasonable and that "it is not a question of whether a judge or a court considers a given regulation adopted by a board as expedient." Its position is in line with that taken by other courts—that boards of education, not the courts, are charged with the difficult task of operating the public schools.

Note, however, that the Tennessee court apparently rejected the reasoning of the Mississippi court in the McLeod case and accepted the opinion of the high school principals that at least for a limited time following marriage the married student's presence in the school has an adverse effect on the morale and efficiency of the school. In distinguishing the Marion case from the McLeod case the court declared that, "Whatever else may be said of that case [McLeod] it is distinguishable from the instant case [Marion] by the fact that the resolution there adjudged unreasonable, hence void, expelled such marrying students *permanently* from the public schools."[15] [Italics mine.]

Marriage not necessarily emancipating

One year later, in 1958, the Ohio Supreme Court heard a case involving the foster parents of an 11-year-old married girl who were found guilty of acting in a way "tending to cause delinquency in such a child" when they helped her to marry.[16] Though the circumstances of the marriage are not pertinent to this article, the results of the case are, for they concern the "emancipated minor" principle.

In reviewing the case, the court noted that the records were silent on whether the girl's marital duties had caused or could cause her to be a truant. It said, however, that it would be remiss if it shut its eyes to the fact that "the duties of homemaker are strenuous, and there is a certain propensity among young married couples to propagate, neither of which activities is conducive to regular attendance at school." It went on to lecture the parents for participating in an activity which tended to make their daughter "incapable of continuing her school attendance with a probable result that she would, *before reaching 18*, be found a delinquent child because of truancy. [Italics mine.]

It might be argued from this statement in the court's decision that, in Ohio at least, marriage of a minor might not necessarily make him "a minor emancipated" from compulsory school-attendance laws.

On the other hand, another statement of the court leads me to compare its thinking with that of the courts in the McLeod and Marion cases and to conclude that the

[12] In re State (Goodwin), *supra*, at 733.

[13] *State* v. *Marion County Board of Education* (Tennessee), 302 S.W. 2d 57 (1957).

[14] *State* v. *Marion*, *supra*, at 59.

[15] *State* v. *Marion County*, *supra*, at 59.

[16] *State of Ohio* v. *Gans* (Ohio), 151 N.E. 2d 709 (1958).

court was in agreement with the belief that married students can have a bad influence on the school. On this question it said:

> Even if we were to assume for the purpose of argument that it is not probable that Kay's schooling will be frustrated by her marriage, and were to assume that she will continue to attend school, it is at once apparent that she will, by virtue of her marriage, have certain knowledge and attitudes which will be far more mature than those of her classmates and about which most of her classmates will, if at all, only have begun to think seriously. *It is such knowledge and attitude that, even in more mature years, tends to keep married groups and single groups separate.*
>
> It is unfortunate but true that, assuming that Kay should remain in school, *the more successful her marriage would be the more it could tend to cause her to act so as to adversely affect the morals of her classmates.*[17] [Italics mine.]

Exclusion from extraclass activities

Following the reasoning of the Tennessee Supreme Court, the Dallas (Tex.) Court of Civil Appeals in 1959 sustained a resolution of the Garland Independent School District of Dallas restricting married students or previously married students to classroom work and barring them from athletic exhibitions and positions of honor, other than academic.[18]

The case was brought to court by a married student barred from playing football (he was hoping to win a college athletic scholarship). He attacked the board's ruling as discriminatory, unreasonable, and unconstitutional in that, among other things, it was retroactive (the resolution had been passed after his marriage).

The board's testimony included two reports (one submitted by the Parent-Teachers Association and the other by a psychologist) on the ill effects on the school of married students participating in extracurricular athletics. Other testimony showed an "alarming increase" in the number of married students in Garland school, that the dropout rate was high among married students, and that married students who remained in school often suffered as much as a 10 point drop in scholastic attainment.

In rejecting the argument of the student, the court said, "Undoubtedly it [the resolution] had a direct relationship to the objectives sought to be accomplished by school authorities—that of discouraging the marriage of teen-age students." It found no validity in the student's argument that the resolution was retroactive, and in support cited the case of *Wilson* v. *Independent School District*[19] in which the court ruled that a school board regulation forbidding fraternities and sororities applied also to members at the time the resolution was adopted.

The court did not consider the opportunity to win an athletic scholarship a vested right. It held that football cannot logically be considered a "required" subject because only a select few can substitute it for a physical education course required of all students. Thus football, it said, is extracurricular and not a part of the regular curriculum.

The Dallas court's decision upheld the principle enunciated in the Marion case that school boards have the power to make such reasonable regulations as they deem proper, and the right to the exclusive management and government of the schools. It closed its written opinion by quoting from the Marion case: "The court's duty, regardless of its personal views, is to uphold the board's regulation unless it is generally viewed as being arbitrary and unreasonable. Any other policy would result in confusion detrimental to the progress and efficiency of our public school system."[20]

The second appellate court case involving the right of school boards to restrict the extraclass activities of married students is that of *Cochrane* v. *Board of Education of Messick Consolidated School District,* heard by the Supreme Court of Michigan in 1960.[21] The court split 4-to-4 on an appeal from a decision of a circuit court which had found that a school district does not violate the statutes guaranteeing to all students an equal opportunity to use public educational facilities when it excludes married students from participating in extracurricular activities. Although the equally divided vote has the practical effect of affirming the decision of the circuit court, the court's action cannot be considered as establishing legal precedent.

Exclusion of pregnant students

A mandamus action was brought early this year (1961) in an Ohio court of common pleas for the reinstatement of a 16-year old married student excluded from school under a rule of the Trenton (Ohio) Board of Education that required pregnant students to withdraw.[22]

In sustaining the regulation of the board, the court emphasized the wide discretionary power of school boards in the operation of schools and noted Section 3321.94 of the Ohio statute which permits exemption from compulsory attendance because of "bodily or mental conditions." The court observed, however, that public policy in Ohio requires that basic education "may not be frustrated or thwarted by boards of education by adopting the

[17] *State* v. *Gans, supra,* at 175.

[18] *Kissick* v. *Garland Independent School District* (Texas), 330 S.W. 2d 708 (1958).

[19] *Wilson* v. *Abilene Independent School District,* Tex. Civ. App., 100 S.W. 2d 406.

[20] *Kissick* v. *Garland, supra,* at 712.

[21] *Cochrane* v. *Board of Education of Messick Consolidated School District* (Michigan), 103 N.W. 2d 569 (1960).

[22] *State ex rel Idle* v. *Chamberlain,* 175 N.E. 2d 539 (1961).

rule that marriage in and of itself will cause a child to be prohibited from attending school." In arriving at its decision, the court considered both the physical well-being of the student and the morale of her classmates. It also considered the fact that the school would permit her to carry on correspondence work with full credit during her exclusion and to return to school after the birth of her child.

FROM THE eight cases I have reviewed, it appears that there is developing a degree of uniformity in the judicial mind on several issues raised by the presence of married students in the schools. I believe, for instance, that we can expect the courts to consistently rule that students who marry against the wishes of the school board cannot be excluded from school solely on the basis of marriage. It also appears that we can expect the courts to hold generally that compulsory attendance statutes do not apply to married students. The most recent court decisions suggest that the courts will continue to be reluctant to substitute their judgment for that of school boards and that they will find reasonable, and within the authority of local school boards to make, regulations excluding married students for limited periods of time following marriage or during pregnancy, or restricting married students from certain activities. Such disposition of the courts will support school boards in their efforts to discourage early marriages of public school pupils.

Attorney general opinions on married students in the public schools

State	Date and number
Arizona	OAG Apr. 3, 1944.
Colorado	OAG No. 57-3069, June 11, 1957.
Florida	OAG 1937, p. 211.
	OAG No. 052-328, Dec. 19 ,1952.
	OAG 1959, No. 059-187, Sept. 15, 1959.
Idaho	OAG Nov. 19, 1959.
Illinois	OAG No. 211, Apr. 29, 1955.
Iowa	OAG 1925-26, pp. 447-8.
Louisiana	OAG 1928-30, p. 452.
	OAG 1946-48, p. 839.
	OAG, 1956-58, p. 717.
Maryland	OAG 1958, p. 150, Jan. 27, 1958.
Michigan	OAG 1911, p. 194 (letter to Hon. L. L. Wright, Superintendent of Public Instruction), Feb. 9, 1911.
Missouri	OAG May 13, 1949.
Nebraska	OAG No. 42, July 13, 1950.
Nevada	OAG No. 44, Apr. 18, 1951.
	OAG No. 270, May 28, 1957.
New Mexico	OAG 1935-36, p. 105.
	OAG 1953-54, No. 5810.
Ohio	OAG No. 2147, Apr. 27, 1961.
Oklahoma	OAG Nov. 21, 1958.
Oregon	OAG No. 3371, May 14, 1956.
	OAG No. 4689, Dec. 10, 1959.
South Dakota	AGR p. 194, 1951-52. (See also Bulletin No. 48, State Department of Public Instruction (1951) for reference to previous opinions.)
Texas	OAG No. 0-4965, Dec. 3, 1942.
	OAG No. S-20, Mar. 19, 1953.
Utah	OAG No. 57-101, Oct. 24, 1957.
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